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ABSTRACT

This publication attempts to answer common questions that parents, teachers, administrators, and others have about mediation as a means of resolving conflicts between parents of a child with a disability and the school district. Four real life stories are used to show how experienced mediators use a variety of methods to help participants work out differences and come to agreement. Provided for each case are a brief overview, a summary of parent concerns, a summary of school concerns, and a detailed account of the mediation process. These summaries suggest the different aspects of mediation that lead eventually to agreement in the various cases including: (1) the opportunity for a full and respective airing of differences; (2) a caucus, although this is not necessary with every mediation; (3) agreeing to a solution for a trial period and then meeting to discuss next steps; (4) agreeing to bring in impartial experts; (5) a willingness to negotiate by all involved; and (6) maintaining the focus on the needs of the child. Contact information for three organizational resources is attached. (DB)

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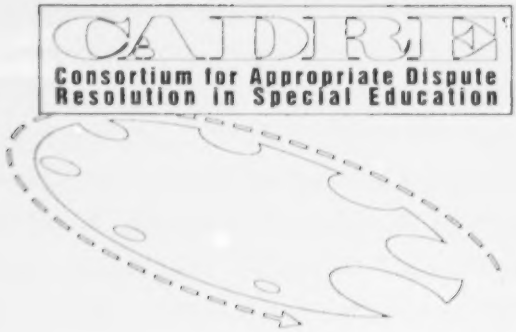

Families and Schools: Resolving Disputes Through Mediation

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www.mediate.com/

National Association of State Directors of Special Education (NASDSE)
www.nasdse.org/home.htm

NICHCY

The National Information Center for Children and Youth with Disabilities (NICHCY)
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The Technical Assistance Alliance for Parent Centers (The Alliance)
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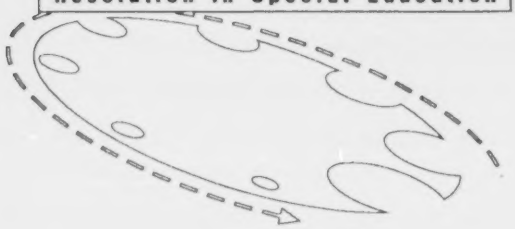

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Overview of CADRE

CADRE stands for the Consortium for Appropriate Dispute Resolution in Special Education. It serves as the National Center on Dispute Resolution and is funded by the Office of Special Education Programs at the U.S. Department of Education. CADRE provides technical assistance to state agencies on how to implement the mediation requirements in the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97). CADRE supports parents, educators and administrators to benefit from a variety of different conflict resolution options and to solve problems and disputes in a less adversarial way.

CADRE key partners include:

- Direction Service, Inc.
- National Association of State Directors of Special Education (NASDSE)
- The National Information Center for Children and Youth with Disabilities (NICHCY)
- Resourceful Internet Solutions/Mediation Information and Resource Center
- The Technical Assistance Alliance for Parent Centers (The Alliance) at PACER
- Western Oregon University — Teaching Research Division

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Introduction

Many questions have been raised on exactly what mediation is and how it is done. This publication has been developed by the Consortium for Appropriate Dispute Resolution in Special Education (CADRE) to respond to some of the questions that so many parents, teachers, administrators, and others have about mediation. Through the presentation of real life stories, the reader will gain a better understanding of the mediation process and its inherent flexibility. As different as these stories are, each ends with a successfully negotiated agreement making it possible for the children involved to get the services they need and the parents and schools to work together with renewed collaboration and partnership.

What is Mediation in Special Education?[1]

Mediation is a process that can be used to resolve disagreements between the parents of a child with a disability and the school district or early intervention office responsible for providing services to the child.

A trained and impartial professional facilitates the mediation process. A mediator does not take sides, but instead helps the participants clearly communicate their concerns, find common ground and identify possible solutions. The mediator does not make problem-solving decisions, but rather helps the participants reach their own mutually agreeable resolution.

Mediation is voluntary and must be agreed to by both the family and the school or service provider. Each session in the process must be held in a timely manner and in a convenient location for both the family and the school. Since discussions must be confidential, participants may be required to sign a confidentiality pledge.

It is believed that mediation is less costly and less adversarial than a due process hearing because it frequently takes a day or less to complete and may not require the same degree of attorney involvement as is typical in due process hearings. If mediation is not successful, a hearing can still be held. The state and/or local school district pay the costs of mediation. Parents do not pay for mediation.

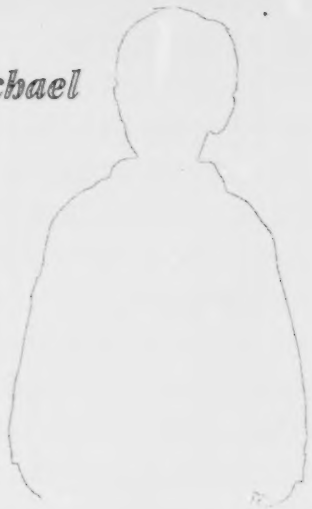
When agreements are reached, the mediator drafts a document that reflects what the participants have agreed upon. Participants sign the final agreement and each receives a copy for his/her records.

Real Life Stories

Every child is unique. Every problem, mediation session, and resolution is different. The following stories are examples of conflicts in which mediation was used. It is hoped that these examples will assist you to better understand what mediation is like. You will find many similarities in each mediation story. You will also see differences in how each scenario or process unfolds. The stories show how experienced mediators use a variety of methods to help participants work through their differences and come to an agreement. The names of the participants and some of the circumstances have been changed to ensure confidentiality.

[1] Certain requirements apply to mediation under IDEA '97. This publication describes mediation in general, including examples of some actual cases not provided under IDEA '97, and is not intended to interpret the mediation requirements of the IDEA '97.

Michael



Overview

In this situation, the challenge is to reach agreement on an educational placement for the upcoming school year for Michael, an eight-year-old who has a severe learning disability and ADHD. Michael's mother, Doris Collins and an advocate, Rueben Marsh attend the meeting to offer the parent perspective. The Director of Special Education, Alice McCall and an attorney, Thomas Cannon, attend for the school system. An agreement is reached in one long mediation session. During the session, both the family and the school talk to each other with the mediator present, and also talk to the mediator separately.

Parent Concerns

Mrs. Collins begins by saying that Michael was found to have ADHD and a severe learning disability when he was four. So far, Michael has gotten all of his education and related services at home. Mrs. Collins doesn't feel he is ready for an education that is not home-based, and is worried that he will not be successful if he is mainstreamed with other students. Up to now, the school district has provided one-on-one tutoring at Michael's home. Mrs. Collins wants this to continue, and does not want to "experiment" by putting Michael in a regular school setting.

School Concerns

Dr. McCall states that Michael does need intense special education services and that the district is willing to continue to provide them — but only in a school setting. Dr. McCall is concerned that if Michael continues to be educated with one-on-one tutoring at home, he will miss important social learning that can only happen by being with other students. The district believes Michael is ready to be in school with his peers.

The Process

After each side speaks, the mediator invites Mrs. Collins and Dr. McCall to ask questions of each other and to talk about each other's concerns. This leads to more direct sharing of information between them, but each still feel that their ideas are best for Michael. With each side holding so strongly to their beliefs, the mediator decides it is time for a caucus.

Usually mediators prefer to keep the participants together and talking directly with each other as much as possible. Sometimes, however, a mediator may meet with each side privately in what is called a caucus. A caucus is a time to explore sensitive areas and to help each participant move beyond their tightly held positions. When a mediator does caucus, he or she typically does so with each side. These discussions are confidential and information is not shared with the other participants without permission.

During the caucus with the school, Dr. McCall has little more to add. She restates the school's belief that it is in Michael's best interest to be in a school environment, and that he will suffer if he doesn't spend time with other children his age. Dr. McCall says she is open to any ideas that might address the school district's desires and also respond to Mrs. Collins' concerns.

The caucus with Mrs. Collins is tense. After some time, Mrs. Collins' advocate, Mr. Marsh, raises a question that ends up helping the mother and school district move toward an agreement. "Do you just expect this kid to go from 5 days a week of home schooling into a regular classroom without any problems?!" Clearly this question brings to light an important concern that needs to be discussed. The mediator invites Mr. Marsh and Michael's mother to discuss this between them. Then it is agreed to share this concern with the district.

The mediator again meets privately with the district and relays the concern about the effect of an abrupt and extreme change in Michael's services. Dr. McCall understands this is an important issue and suggests that a trial period — with a mix of in-home tutoring and regular classroom placement with appropriate supports — might be worth trying. In this way, Michael will have the benefit of the learning at home that he is used to, as well as the benefits of being at school with other children his age. Progress could be monitored and changes made over time with the end goal of Michael being educated at school, in the least restrictive environment available and appropriate for him. When Mrs. Collins is given this option, she indicates she is still worried, but willing to try as long as the change is not going to be too extreme.

The mediator brings the participants back together and shares with the school district the mother's thinking about Michael's transition from in-home to school-based services. The district is willing to initially try school services three hours a day, five days a week for a trial period of at least eight weeks. Mrs. Collins agrees to this schedule. The mediator then asks several questions to be sure that, as much as possible, any potential problems with the agreement have been addressed.

A final agreement is then written that includes a detailed calendar of Michael's services — when he will be educated at home; when he will be educated at school; the nature of his services and supports in each location, and a set time every two weeks for the mother and school to discuss his progress. They agree to take the agreement back to Michael's IEP team with a goal of having the agreements incorporated into the IEP. They also agree to meet with the mediator again at the end of the eight-week trial period to discuss any issues that need attention at that time. At the end of the meeting, the mother and school district each leave with copies of their signed mediation agreement.

Lisa

Overview

Mr. and Mrs. Houk feel their fifth grade daughter, Lisa, should be found eligible for special education services due to her learning disability. The Houks have tried to establish her eligibility for two years, but twice the school district has said that Lisa is not eligible for services. Before the formal mediation process, the parents and the district each meet with the mediator. The actual mediation includes three more meetings over a five-week period.

Parent Concerns

In their pre-mediation meeting, Mr. and Mrs. Houk tell the mediator that the local school district's failure to find their daughter eligible either for special education or 504 services is wrong. Several evaluations the family has gotten on their own show that Lisa has a learning disability.

Before third grade, Lisa seemed to be doing well in school. In third grade, Lisa's parents saw her struggling with spelling and math. Homework was very hard for Lisa and she did not seem to understand simple math problems.

Since then, Lisa has been getting help from a private tutor. Her teacher, with help from the tutor, is making accommodations in the classroom. With tutoring and accommodations, Lisa is doing much better in math. Mr. and Mrs. Houk are worried that the present support may be stopped at some point and that Lisa may continue to fall behind her peers. They are also concerned about her inability to remember and make sense of what she hears and wants to say.

Mr. and Mrs. Houk say they are ready to go to due process to argue the school's decision on Lisa's ineligibility for services. They feel strongly that eligibility is the only thing that will ensure that the school will be responsible for meeting Lisa's needs. They also feel that the school district should reimburse them for the costs of tutoring for Lisa.

Since Mr. Houk is deaf, the mediator will need to obtain a two-person team of sign language interpreters for use during the sessions. The cost of the interpreters will be covered by the school district.

School Concerns

In the pre-mediation phone meeting with the mediator, Mrs. Warren who represents the school district says that they have done a number of evaluations in response to the family's concerns. All these evaluations have shown that Lisa is performing at her grade level in all areas. Mrs. Warren and the building principal, Mr. Renwick, also state that in response to parent concerns, they have been accommodating Lisa's needs. The school says that Lisa has normal or better mental ability and that her academic performance is within normal limits for her age and grade. Using the results from recent state tests and teacher reports of daily class work, the district maintains that Lisa does not need special education services.

The Process

The mediator reviews proper etiquette for the use of the interpreters and ways to facilitate Mr. Houk's participation. She advises the participants to speak directly to Mr. Houk, not the signers and to allow extra time for him to respond. Then she suggests guidelines for the process on confidentiality, turn taking, not interrupting, and being respectful of each other. She asks the participants if they have any guidelines they want to include. Lisa's parents say that the school always speaks first and they often feel they aren't really heard. Because of this, Mrs. Houk suggests that it might be helpful if she and Lisa's father speak first and the school district agrees.

The mediator completes opening business and invites each participant to share his or her view. Mr. and Mrs. Houk say they feel "wronged" once again by the school. While they are willing to try mediation, they believe the school should pay for its neglect. They restate their belief that leaving Lisa's future education to the good will of the school, rather than establishing her eligibility, is just not in Lisa's best interest.

The district administrator, Mrs. Warren, says the current effort by Lisa's parents is terribly misplaced. She states that the parents are "back at us again" — not because of Lisa's needs, but because of unfinished business the family has with the district over their older daughter, Susan. She's offended that the care and attention she has given Lisa's education is going unnoticed. She wonders what is behind the parents' actions. The building principal, Mr. Renwick, says that his school has gone a long way in responding to the family's concerns. He is amazed that the classroom modifications made for Lisa don't seem to be enough for her parents.

After making sure that everyone has understood each other, the mediator meets separately, or caucuses, with each side. The mediator's first goal is to get past the stated positions on Lisa's eligibility vs. ineligibility and get both sides to focus on their common interests and desire for the best possible results for Lisa. At the end of both caucuses, the mediator feels that some middle ground has been found. It appears that each side sees that a mutually satisfactory educational plan for Lisa is possible. Using a flip chart, the mediator lists each participant's "Essential Ingredients for Lisa's Educational Plan". At the parent's suggestion, the issue of reimbursement for tutoring is set aside for later discussion.

After getting back together in a group, the discussion falls apart due to frequent mention of past conflicts over Susan, Lisa's older sister. After trying for forty-five minutes to get the participants back on track, the mediator feels that the past struggle and mistrust between the participants is so strong that reaching an agreement seems unlikely.

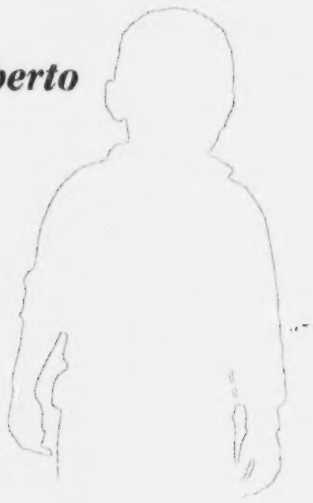
After stating this concern, the mediator suggests that perhaps another point of view might be helpful. A third party, who has no history with either the school or the family could be hired to gather and review information on Lisa's educational plan. The participants agree upon a neutral third party observer, Mrs. Daniels, who is a special education teacher and a parent. Her task is to review Lisa's files, observe Lisa in the classroom several times, and then attend the mediation and provide verbal feedback. It is agreed that there will not be a written report, and the school will cover her costs. Mrs. Daniels' job is to bring her observations to the mediation and help the participants focus on better outcomes for Lisa. Hopefully, this will reduce the conflict around the question of Lisa's eligibility.

At the next mediation session, Mrs. Daniels gives a detailed oral report. She notes Lisa's challenges and unmet needs in the classroom. Mrs. Daniels also questions why Lisa hasn't at least been found eligible for a 504 plan. The parents, excited by this statement, request that the school hold another 504 eligibility meeting. Surprised by Mrs. Daniels' comments, the district agrees to review 504 eligibility within ten days. However, once again Lisa is found ineligible.

After this decision, a third mediation session is held. The district brings a draft "Personal Education Plan" for Lisa. The plan includes a long list of classroom adaptations and accommodations, which impresses Lisa's parents. The parents feel that in spite of the recent denial of eligibility their concerns are finally getting addressed and the district is serious about helping their daughter.

Following some changes to the draft educational plan, a final agreement is prepared and signed by all participants. The parents "let go", for the moment, their concern about what might happen if new teachers or administrators downgrade or ignore Lisa's needs. Both Mrs. Warren and Mr. Renwick assure the parents that they are committed to the best possible educational results for Lisa. Though satisfied with the educational plan for Lisa, Mr. Houk makes it clear that he still intends to request a due process hearing for reimbursement of the costs of Lisa's tutoring.

Roberto



Overview

This mediation concerns five-year-old Roberto Lorenzo, a Latino boy with autism, whose parents disagree with proposed services from the school district's early childhood program. They have taken their son out of the early childhood program after having received services there for 1 1/2 years. Three months prior to the mediation, Roberto's parents began paying a private tutor to provide Applied Behavioral Analysis (ABA) services to Roberto. The family has an attorney who has filed a request for a due process hearing and a civil court case. The case is over compensation for the poor services Roberto received in the early childhood program, plus attorney's fees.

Prior to the mediation, the mediator speaks by telephone with Roberto's father, with the director of the early childhood program, and with attorneys representing the family and school district to get an overview of the main issues. Before contacting the parents, the mediator finds a "cultural guide" to discuss appropriate "dos and don'ts" that are respectful of the family's culture. The mediator learns that Roberto's grandparents are often included in making important decisions. The mediator asks Mr. Lorenzo if there are others who need to be included in the mediation. Roberto's parents say they usually talk to Mr. Lorenzo's father about family matters, but that he doesn't need to attend the meeting. The mediator also learns he needs to get a translator for Mrs. Lorenzo who does not speak English. The mediation session lasts one very long day, most of which is spent in joint session.

Parent Concerns

Mr. and Mrs. Lorenzo believe the district should have been giving Roberto 40 hours per week of ABA programming right from the start. Instead, Roberto was given services less than two hours per day from a special education teacher who was not trained in autism. They are also upset that Extended School Year (ESY) services were not given the first year Roberto was in the program.

Mr. and Mrs. Lorenzo say they became more worried about their son's delays and asked for more evaluations. Several months went by before a meeting was held to review the results from this testing. After this meeting, the program did increase services to Roberto and provided ESY the next summer.

Mr. and Mrs. Lorenzo explain they have learned about autism, talked to other parents and programs that serve children with autism, and are sure that a strong ABA program is what Roberto needs. Since the early childhood program didn't offer ABA, they chose to pay for private services and started to see their son make progress.

They now feel that the district staff does not know how to provide an appropriate program for Roberto. They also believe Roberto has lost valuable time and that his delays may be worse now because of the district's failures. They want the district to compensate for having failed Roberto and to provide him with the right services from now on.

School Concerns

The early childhood program director, Mr. Mann, says that mistakes were made. A delay in testing and services did occur and some services were not correct for Roberto. Mr. Mann wants to focus on how to meet Roberto's needs now — who will provide services, where, how often, for how long, and how to make sure Roberto doesn't get overloaded.

In their defense, Mr. Mann says that there were things that led to a delay in services. Roberto's mother speaks very little English and both parents do not speak English at home. Mr. Mann says Roberto's delay in learning language and reaching other goals was at first thought to be because of this and other family factors. Several chances for testing were delayed due to scheduling problems, miscommunication and Roberto's being sick sometimes.

The Process

At the beginning of the mediation session, the mediator welcomes everyone and reviews an agenda that outlines the problem-solving process they will use.

The mediator hands out Agreement to Mediate forms in Spanish and English that describe the process and the roles of the participants. The agreement states that the process is voluntary, the participants are the decision-makers, and the mediator acts only as a facilitator. The mediator further explains that "full disclosure" means that each participant is expected to provide the information requested by the mediator or another participant during the mediation. "Confidentiality" means that neither the mediator nor participants can use what is said in the mediation in a later legal matter. A separate meeting, or caucus, is possible during the mediation for any participant to meet privately with the mediator, his or her advocate, colleague or attorney.

The agreement is discussed, changed to state that the Lorenzos may talk about the mediation with their extended family, and then signed by all participants.

The mediator invites Mr. Lorenzo to speak first and then asks Roberto's mother to add her thoughts. The district representatives are asked to make note of any questions they have, so the parents can speak without interruption. Following the parents, the mediator asks Mr. Mann not to respond to their statements, but to simply share his perspective. The parents take notes on any questions they have. The two attorneys then are asked if they have anything to add. After everyone's questions are answered, the mediator restates both viewpoints and highlights those areas where the two sides agree.

The mediator then asks for ideas on an appropriate solution to the problem. The Lorenzos attorney makes a proposal that is discussed before the lunch break. Before returning to the mediation, the mediator writes up a summary of what happened in the morning and lists the areas of agreement and conflict.

After lunch, the mediator uses the summary to start the afternoon discussions. The mediator then asks the participants to study the parents' proposal in detail. Further discussion leads to agreement that it is important to both sides that all service providers are trained and knowledgeable in autism, and that services are provided in a stable and consistent manner.

Mid-afternoon, the mediator meets with the Lorenzos and their attorney and then with Mr. Mann and the district's attorney. The proposal is looked at according to the issues that are most important to each side. The mediator goes back and forth between the family and the district, clarifying concerns and communicating offers and counter-offers. After several exchanges, the participants are close to an agreement, but are unable to agree on the amount to be paid to the parents' attorney.

After questioning, the mediator realizes that not only the family, but also both attorneys and the district have strong feelings about the events that have brought them to mediation. The mediator encourages the participants to speak directly to each other about these feelings. They agree and the mediator reconvenes a joint session.

During this process, Mr. Mann talks about the shock and fear of personal liability caused when the program educators were named as defendants in the civil action. The district attorney talks about her being upset at the parents' attorney for what she calls, "going overboard." Mr. Mann says the contract with the service provider is being reevaluated and some things have already been changed to prevent similar problems in the future.

The Lorenzos attorney states that she was perhaps insensitive to the effect on district employees of naming them as defendants in the civil action. Her intent was for the lawsuit to be a wake-up call to the district. She talks about her belief that the district has seriously failed in its responsibility to Roberto and her goal is that other children be protected from the same harm.

Following this airing of concerns the participants quickly move into developing an agreement. They agree on the amount to compensate for the prior early childhood services provided to Roberto. The participants agree the district will pay for Roberto's current ABA instruction or an agreed upon number of hours at an agreed upon hourly rate that can be used by the Lorenzos over the next three years. The district will provide speech and occupational therapy. At each IFSP meeting, a translator will be provided for Mrs. Lorenzo. Finally, the participants compromise on the amount of the attorney's fees. The agreement is drafted by the parents' attorney, translated into Spanish and signed by each participant.

Although the mediation ends with an agreement, it is an agreement that responds to the past failures and does not address Roberto's current or future educational needs. The Lorenzos are firm that they will not send Roberto to school again unless he receives services from the private provider on whom they have come to rely and trust. Mr. Mann says they are offering a program that is appropriate and will meet Roberto's educational needs. While there is room for compromise on each part, whether they can reach one that will provide Roberto with appropriate ongoing services remains a challenge. A future session is scheduled to address these unresolved issues.

Jamie

Overview

This case relates to placement for Jamie, a fourth grade student who has mild cerebral palsy and developmental delays. Jamie was in kindergarten during her first year of school and has been in a special class since first grade. Jamie's mother wants her to attend her neighborhood school, and be in a regular education class. The school district wants Jamie to stay at the district's special education facility.

Before filing any formal complaint, both sides agree to take part in mediation paid for by the district. The mediation is held over two separate 3-hour sessions.

Parent Concerns

Jamie's mother, Mrs. Marshall, is convinced that Jamie should be in her neighborhood school, in a regular education class with supplementary aids and services. She says Jamie made good progress in kindergarten, but has not done well since that time. Mrs. Marshall feels that Jamie learns best when educated with children who are not disabled. While Jamie does not have any behavior problems, her mother is worried she will develop them. She says Jamie has been showing signs of being frustrated and depressed lately. Mrs. Marshall hopes that mediation will result in Jamie going to her neighborhood school, and attending the regular education class with the support of an aide and a special education teacher to adapt instruction for her. Mrs. Marshall says she is willing to work with the school district to develop an appropriate curriculum for Jamie. She also states that she is not asking for a full-time special education teacher for Jamie. Rather, she feels a special education teacher at the neighborhood school can oversee Jamie's placement in a regular class, with a classroom aide and other support services.

School Concerns

The special education director, Herbert Rankin, is convinced that Jamie's current placement is appropriate and that she cannot be successful in a regular education classroom. He bases his opinion on the severity of her disability and her need for individual attention. Mr. Rankin feels Jamie will fail, be frustrated, and probably develop serious emotional problems if placed in a regular class. Based on testing done by the school, he states that Jamie has mental retardation. For this reason also, he believes the special class continues to be the appropriate place for Jamie. Mr. Rankin says the school district cannot afford to hire another teacher for Jamie just so she can go to her

neighborhood school. He suggests that such costs for one student are unfair to other students. Finally, he says the related services staff are at Jamie's current school and cannot be pulled away to go to her neighborhood school. Such a move would be unreasonable. Mr. Rankin thinks that Jamie should stay in the special class, even though it is farther from home than her neighborhood school. He says that in this class, Jamie receives all the special education and related services required to meet her needs. He further states his belief that this placement meets the least restrictive environment requirements of the law. He says that he and the special education staff are willing to work with the parents, but that they have not felt the same kind of openness from the family.

Mr. Rankin agrees that Jamie did well in kindergarten, and that she has not made the same kind of progress in the special class. However, he says that since Jamie is limited, her lack of progress is to be expected and is not the fault of her teachers.

Finally, Mr. Rankin says he is willing to increase Jamie's time in the regular class during the upcoming year and then look at her progress. If this works, then he would be willing to consider placement in the neighborhood school for the following year.

***The Process*: Session One**

After explaining the mediation process, the mediator gives each side time to share their point of view. Mrs. Marshall voices her frustrations and feelings of what is best for her daughter. While her attorney says that they are fully ready, willing and able to file a formal complaint and go to court, he also recognizes that they are in mediation to see if they can resolve the matter. Toward this end, he presents a number of options that would, in his and the mother's mind, greatly improve things.

These options include holding weekly meetings between Mrs. Marshall, Jamie's lead teacher, and the assistant. He also says they are willing to meet with one or more independent expert to get their input on revising Jamie's placement. Further, they are willing to try something out for a limited period and then have an objective third party review and make recommendations.

In response, counsel for the school district says she is confident the district has done everything by the book and they have no liability exposure. She states it is critical that the district avoids setting dangerous precedent in terms of placement and resource allocation. That said, she also acknowledges the benefits of settlement as opposed to proceeding to a hearing.

The first session ends with both sides creating a list of concerns and options for satisfying these concerns. It is agreed up front that the discussion and list be considered simply "brainstorming". The fact that one side or the other is willing to discuss certain possibilities does not in any way mean they are willing to proceed with implementing any of these ideas.

In reviewing the list of possibilities, a few items are easily agreed upon. It is agreed that there will be more frequent meetings between Jamie's mother and school staff. The school will regularly update Jamie's mother on her curriculum and staff will assist her to understand how she can best work with Jamie at home.

At the close of the first meeting, each side is asked to make a list of what they would be willing to offer the other side (as part of a package deal) if the other side was willing to agree with their suggested placement. These lists will be discussed at the next session.

***The Process:* Session Two**

After reviewing the agreements reached during the first session, the mediator asks each participant to share his/her thoughts on what they are willing to offer.

Mrs. Marshall first shares all of the things that she is willing to do, and the demands that she is willing to drop, if Jamie's primary placement is in the regular classroom. Mr. Rankin then describes what the school district is willing to do, if Jamie stays in the special class.

At this point, the mediator comments that things do not need to be fully one way or the other. Almost any settlement requires flexibility. The mediator notes that a mediated settlement is imperfect in that there is almost always some "give and take" in order to get to a reasonable resolution. She also states that it might make sense to consider trying an arrangement for a trial period and then reviewing it. Mrs. Marshall and Mr. Rankin both agree that in addition to being reasonable, it's important that an agreement lead to a program that meets Jamie's needs.

The mediator then meets in private, known as a caucus, with each side. Mrs. Marshall and her attorney say that they really do not want to go to a hearing on this. But, they very much want to give Jamie the chance to grow in a regular class. They recognize that they cannot know for sure what is best. With Jamie's depression and lack of progress, they feel it is certainly worth giving the regular class setting another try.

The mediator clarifies that, if the school is willing to try the regular class for, say, three months, this would be sufficient for Mrs. Marshall. And, there would be mutually agreed upon criteria for evaluating the success of the placement.

During the caucus with the school district, Mr. Rankin suggests that a change so late in the school year (March) is not a good idea. However, if Mrs. Marshall is willing to continue the present placement for the balance of the year, the district will support a trial regular class placement, in her neighborhood school in the fall. This trial placement would be for at least three months with continuation to be determined by two mutually acceptable independent experts.

The mediator brings the participants back together and they discuss the details of an understanding. Mrs. Marshall and her attorney agree to continue with the present placement, with the understanding that the new fall placement will extend up to winter break at which point it will be evaluated. The participants also agree that if they cannot agree on what is best for the balance of the school year, the two reviewing experts will decide the matter. It is finally agreed that Mrs. Marshall and the school district will seek the assistance of a local university and the state ARC to identify mutually acceptable experts. The district will cover the costs of their review. After reaching consensus on all of these issues, the agreement is signed by both participants.

In Summary

You can see from each of these stories that the mediation process can take slightly different paths and end in the same place, with a collaborative agreement that resolves a unique problem.

What worked for these families? Different aspects of the mediation process led to a successful resolution of these disagreements including:

- *The opportunity for a full and respectful airing of differences that sets the stage for reaching solutions and is central to the mediation process;*
- *A caucus, although this is not necessarily so with every mediation;*
- *Agreeing to a solution for a trial period and then meeting to discuss next steps;*
- *Agreeing to bring in impartial outside experts;*
- *A willingness to negotiate by all involved; and*
- *Maintaining the focus on the needs of the child.*

Each of these families participated in a meaningful way to resolve a dispute on behalf of their child. Not every issue was resolved, but significant agreement was reached on the most critical issues. Perhaps most importantly, solid progress was made in reestablishing a collaborative working relationship between the families and schools.

Resources

CADRE
Consortium for Appropriate Dispute Resolution in Special Education
P.O. Box 51360
Eugene, OR 97405-0906
541-686-5060 (voice)
541-686-5063 (fax)
www.directionservice.org/cadre

NICHCY
National Information Center for Children and Youth with Disabilities
P.O. Box 1492
Washington, DC 20013-1492
800-695-0285 (voice/TTY)
www.nichcy.org

The Alliance
The Technical Assistance Alliance for Parent Centers
c/o PACER Center
8161 Normandale Blvd.
Minneapolis, MN 55437-1044
888-248-0822 (voice)
952-838-0199 (fax)
www.taalliance.org

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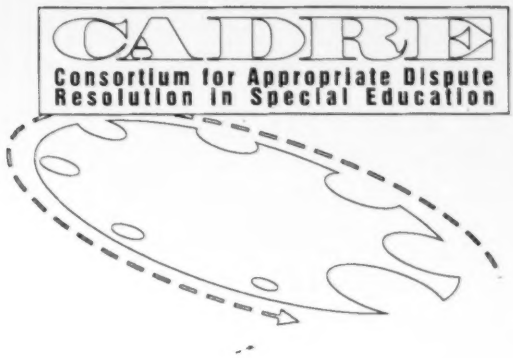

CADRE is funded by the United States Department of Education as the National Center on Dispute Resolution and Special Education.

CADRE leverages the experience of individual and organizational leaders to provide efficient, effective and high quality technical assistance. These affiliations include a unique blend of parents and professionals, expertise in technical assistance and extensive knowledge of dispute resolution practices.

CADRE builds its activities, products and services around the needs of state and local education and early intervention systems, parent centers, families and educators.

CADRE uses advanced communications technology and traditional strategies to:

- ☐ *Provide technical assistance on implementation of the mediation requirements under IDEA '97.*
- ☐ *Motivate parents, schools, and service providers to use appropriate dispute resolution processes.*
- ☐ *Stimulate and support efforts to resolve disputes early and effectively.*

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